am filling out the application, I would probably indicate that I am a minority person, although I don't like the term. I use it only to communicate. I do not like the term ''minority.'' But for the purpose of communicating today, I would indicate that I am a minority person.

The only thing this bill will do, as it relates to acquiring the intelligence, is give us another space so that we can now indicate that, if you so choose, Madam Speaker, you are a member of the LGBTQ-plus community.

In filling out this form, if I chose not to indicate I was a minority person, I wouldn't have to. I would just sign it, completing the other aspects of it, and I would be done with it.

It only allows for the placement of additional language on the document so that persons who desire to—and it is important to note, Madam Speaker, that you must have the desire; it is with intentionality, and you voluntarily do this—would indicate, if you choose to, that you are a member of the LGBTQ-plus community.

□ 1315

I must say, candidly, I really don't see how this can become the debate that it has become. At some point in this country, we have to understand that discriminating against people because of who they are is inappropriate. It is unlawful.

I am the son of a segregated South, where I was lawfully discriminated against. I know what it looks like. I know what it smells like. I know what it sounds like. I know what invidious discrimination tastes like. I drank from filthy colored water fountains in my lifetime.

I don't wish any of this type of behavior that I had to endure on anyone else, so I rise today in support of this legislation as a continuation of my mission to do all that I can to help others avoid the horrors of invidious discrimination.

I am so grateful to Chairwoman WATERS for all she has done. She has always been a friend, not only to me, but to those who are among the least, the last, and the lost. And I thank the gentlewoman for all that she has done.

Mr. MCHENRY. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I think my colleague Mr. GREEN outlines this well. This is not a mandatory reporting bill, but data collection. Though the terms may not be perfect to Chairman GREEN's points and perhaps we need to look at the language of this reporting, for sure, but this is not a mandatory reporting bill. This is voluntary information that borrowers can offer up or not. Data is a good thing, especially if it is provided voluntarily.

For those reasons, I support this bill and I urge its adoption.

Madam Speaker, I yield back the balance of my time.

Ms. WATERS. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, this bill takes necessary action to help ensure that LGBTQ-owned businesses are treated fairly by financial institutions and protected against lending discrimination. The bill passed unanimously out of the House Financial Services Committee with a voice vote. So I am pleased that the majority leader has worked with me to bring this bill back up for a vote quickly.

This bill is supported by the Human Rights Campaign, the National Center for Transgender Equality, Out Leadership, the National Gay and Lesbian Chamber of Commerce, and many others.

Although some of my colleagues did not support this bill last week, I urge them to reconsider, to support all small businesses this week, and vote ''yes'' on H.R. 1443.

I would like to thank the ranking member for his consideration, his support. In closing, I would just like to add that, as Mr. GREEN identified, I, too, am a victim of discrimination for most of my life, and all of my family and my dear friends and sometimes the entire neighborhood that I have lived in.

So we know what it feels like, and we know that there is, for example, today, a huge wealth gap because of discrimination, a lack of being able to borrow from the banks that were making credit available to so many others. It was not made to us. So oftentimes we were not able to buy a home. We were not able to get a loan for the basic kind of things that any family would need.

So we cannot, and I cannot be a part of public policy and systems and protocols that would exclude the LGBTQ community from being able to get loans in the ways that others are doing. It is pure discrimination. It must stop.

Madam Speaker, I urge all of my colleagues on both sides of the aisle to vote ''yea'' on H.R. 1443, and I yield back the balance of my time.

Mr. TORRES of New York. Madam Speaker, in the United States, there are 1.4 million LGBTQ businesses contributing more than $1.7 trillion to the American economy. We have a vested interest in sustaining and strengthening these businesses with equal access to credit, which is the beating heart of the American economy.

As a former New York City Council Member, I partnered with the National LGBTQ Chamber of Commerce to establish the nation's largest municipal certification program for LGBTQ business enterprises, enabling those businesses to enjoy equal access to a $25 billion pool of government procurement.

The legislation before us, H.R. 1443, builds on a foundation laid by several statutes and regulations. The Equal Credit Opportunity Act (ECOA) prohibits credit discrimination, including but not limited to sex discrimination. A new interpretive rule from the Consumer Financial Protection Bureau (CFPB) clarifies that the ECOA's prohibition against sex discrimination applies to sexual orientation and gender identity. Section 1071 of the Dodd-Frank Act, which exists to enable and enhance the enforcement of the ECOA, requires financial institutions to report information about the race, ethnicity, and sex of credit applicants who serve as principal owners of small businesses. My legislation would expand the 1071 reporting requirements to include not only sex but also sexual orientation and gender identity. It would enable anti-discrimination enforcement where none might exist.

Even though the United States has made substantial strides toward LGBTQ equality, the mission is far from accomplished. Seventy percent of the LGBTQ community remains unprotected by anti-discrimination laws. When it comes to credit, according to the Williams Institute, more than 7.7 million LGBTQ adults live in states that offer no protection against discrimination based on sexual orientation or gender identity.

It is often said that knowledge is power. Knowledge affords us the power to detect discrimination that might otherwise go undetected. Take, as an example, the Home Mortgage Disclosure Act, which is analogous to the legislation before us. Both the National Community Reinvestment Coalition and Iowa State University reviewed data from the HMDA and found that same-sex couples were denied loans at higher rates than heterosexual couples, despite having comparable creditworthiness. It also found those same-sex couples paid higher fees and interests. The lesson of the HMDA is that sunlight can be a powerful disinfectant against discrimination.

H.R. 1443 would make credit more accessible, credit laws more enforceable, and creditors more accountable. It would represent a triumph of transparency in the service of economic opportunity for all, regardless of who you are and whom you love.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 486, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROSENDALE. Madam Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE OFFICE OF THE COMPTROLLER OF CURRENCY RELATING TO ''NATIONAL BANKS AND FEDERAL SAVINGS ASSOCIATIONS AS LENDERS''

Ms. WATERS. Madam Speaker, pursuant to House Resolution 486, I call up the joint resolution (S.J. Res. 15) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of the Comptroller of Currency relating to ''National Banks and Federal Savings Associations as Lenders'', and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 486, the joint resolution is considered read.

The text of the joint resolution is as follows:

S.J. RES. 15

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Office of the Comptroller of Currency relating to ''National Banks and Federal Savings Associations as Lenders'' (85 Fed. Reg. 68742 (October 30, 2020)), and such rule shall have no force or effect.

The SPEAKER pro tempore. The joint resolution shall be debatable for one hour, equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services or their respective designee.

The gentlewoman from California (Ms. WATERS) and the gentleman from North Carolina (Mr. MCHENRY) each will control 30 minutes.

The Chair recognizes the gentlewoman from California.

GENERAL LEAVE

Ms. WATERS. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S.J. Res. 15 and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

Ms. WATERS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today in support of S.J. Res. 15, a resolution to invalidate the Office of the Comptroller of the Currency's so-called True Lender Rule under the Congressional Review Act.

This resolution would end a dangerous Trump-era rule that would allow predatory lenders to evade State usury laws and target consumers with high interest rate loans of 150 percent or higher through sham partnerships with banks.

I would like to thank Representative GARCÍA from Illinois for introducing the House companion to this measure and for his leadership in fighting to protect consumers from predatory lending schemes.

My committee has held several hearings that have exposed the consumer harm that results from these rent-a-bank schemes and explored how the Trump administration's harmful rule erodes the consumer protections.

The OCC's rule undoes centuries of case law that ensured that nonbank financial institutions were subject to State interest rate caps when they partnered with banks, so long as they held the primary economic interest in a consumer loan.

Trump's OCC allowed nonbanks to launder their loans through OCC-chartered banks, as long as the bank is listed on the loan origination documents, effectively allowing nonbanks to ignore State usury laws.

Simply put, before this Trump-era rule was finalized, if a nonbank in California, which has an interest rate cap of, for example, 36 percent, wanted to make a loan to a customer in California, the nonbank can't charge more than 36 percent. OCC's True Lender Rule turns this commonsense legal doctrine on its head.

What the Trump-era rule says is that this nonbank can now partner with a national bank that is based in, for example, Utah, which doesn't have an interest rate cap, to now legally charge virtually any interest rate to the consumers in California.

This is true even if the bank in Utah has done nothing but put its name on the loan paperwork and intends to immediately transfer the loan to the nonbank in California. We have seen interest rates of more than 150 percent charged to consumers in this way.

The committee's work has shone a spotlight on heartbreaking stories of the harm that this rule has caused to consumers and small business owners. Let me give you a real-world example of a Black-owned small business that was harmed by one of these rent-a-bank schemes authorized by Trump's OCC.

A recent news report detailed the case of Carlos and Markisha Swepson, who were the owners of Boulevard Bistro, a restaurant in Harlem, New York. As they told NBC News, they took out several business loans for $67,000 and were charged a whopping 268 percent APR.

For all intents and purposes, their lender was World Business Lenders, a nonbank lender that has a partnership with Axos Bank. This is a bank in New York State. Even though the loan was made by World Business Lenders, because Axos Bank's name was on the loan documents, the nonbank could bypass the New York usury limit of 25 percent APR.

Due to the pandemic, the Swepsons are now behind on their loan payments. They are now facing foreclosure proceedings filed by World Business Lenders on a home they own that acts as collateral for the high interest rate loans. If not for Trump's rule, the Swepsons would have only been charged a 25 percent interest rate and would probably not be facing financial ruin.

If Congress lets this Trump-era rule stand, these kinds of predatory, triple-digit interest rate loans will continue to be made through these kinds of rent-a-bank schemes, and lenders will continue to take advantage of small business owners and other consumers desperate to stay afloat.

Additionally, let's not forget that during the last election, Nebraska joined 45 States and the District of Columbia that have already passed legislation to limit usury rates for small-dollar installment loans.

The Trump-era True Lender Rule is a backdoor way for nonbanks to charge triple-digit interest rates on loans at the expense of consumers in States where voters turned out to pass interest rate cap laws.

No wonder some called this the ''fake lender'' rule.

For these reasons, I urge my colleagues to support this bill. And for those who did not understand what we were talking about when we talked about the True Lender Rule, I think I have laid it out in such a way that you understand this is predatory. This is a rip-off. And for these reasons, I urge my colleagues to support this bill.

Madam Speaker, I reserve the balance of my time.

Mr. MCHENRY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in strong opposition to this resolution.

Earlier this week, President Biden met with financial regulators. From the four-sentence recap released by the White House, we know one of the topics they discussed was ''promoting financial inclusion and responsibly increasing access to credit.''

I agree with that concept, and I think we should all agree with that concept. Unfortunately, my Democrat colleagues here in the House and the Senate don't seem to be on the same page with the Biden administration. This resolution we are considering today would actually make financial services more expensive and credit less available to consumers and to small businesses and families across the country.

So why are my Democrat colleagues strong-arming this resolution through Congress?

Well, the answer is pretty simple. It is politics. That is what it is. Let's call this what it is. It is blue States and their leftwing, so-called consumer protection advocates who want to, again, limit the reach of national banks and partnerships under the guise of ''consumer protection.''

Democrats are more interested in scoring political points with leftwing activists than supporting the borrowers and small businesses that this OCC True Lender Rule helps.

□ 1330

We have witnessed Democrats work for decades to limit the scope of national banks through one measure or another.

The National Bank Act was signed into law in 1864. We have national banks. We have had national banks for 157 years in this country similar to today. What they are striking at is opposition to what we have lived with for over 157 years of well-regulated national banks doing business across the country.

The left, my colleagues on the opposite side of the aisle, will provide misleading statements about interest rates and spurious arguments about State versus Federal regulation. They will argue consumers are harmed and this so-called partisan rule that they are driving invites bad banking practices.

Above all else, my colleagues across the aisle see this as an opportunity to rebuke the last administration, simply because they don't like the former President. I understand that. There is plenty of debate about that. But we should not tinker with existing law that is longstanding and predates this President or any other President. We should be talking about the contents of that law.

I would like to remind my friends as well that it was the Obama administration who supported the risk-management principles underlying the true lender rule. It was an effort to regulate, to ensure that instead of having shadow banking provide these services, that you have well-regulated consumer protection laws at the Federal level as a part of this process.

So once again, we have the opportunity to come together to support good, bipartisan policy, rather than doing what the Democrats would rather do, which is appease the woke left.

So let's stop the political theatrics and talk about what the true lender rule actually does, not what my Democrat colleagues claim it does.

The rule specifies that when a bank makes a loan, the bank is the true lender if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan. That loan would be regulated by the entity making the loan, funding the loan, and the regulation would fall upon them. So the consumers have Federal consumer protection laws that would act on that loan. That is what it does.

My friends that created the Consumer Protection Bureau, I thought you wanted that, and yet you are arguing against that with this rule today. It is pretty straightforward; it is a pretty straightforward law. It shouldn't be political.

This rule also clarifies that as the true lender of a loan, a bank holds the responsibility of complying with Federal law. This eliminates the greatest risk associated with abuse of rent-a-charter schemes, which we agree are bad, and I think we could be doing something about that rather than this spurious argument we have today.

In October of last year, the OCC finalized the true lender rule that is being debated today. This was a second step in a decades-long process to clarify the bank-third-party relationship when issuing a loan. It has been longstanding practice, but there have been lawsuits, a great deal of uncertainty about it, a lot of questions in particular jurisdictions around the country on the nature of those partnerships, and it clarifies those partnerships in a rules-based regime.

This legal clarity enables bank and fintech partnerships to provide their customers with the financial products they want and need.

Consider this: According to the New York Federal Reserve, one in four African-American-owned firms used fintechs to access PPP loans, one in four. And they did so using this legal doctrine that enabled that to happen in partnerships with national banks.

Technology helps create greater financial inclusion. So why are my Democrat colleagues so afraid of technology, so afraid of innovation?

Per usual, my Democrat colleagues are willing to ignore facts in favor of myths that back up their preferred narrative. That is unfortunate, especially for something this important.

The left likes to say that banks can charge whatever interest rate they want. That is simply not true. Federal law gives national banks and Federal savings associations the same authority that State banks have regarding exportation of interest rates.

Now, both Federal- and State-chartered banks must conform to applicable interest rate limits in those States. States retain the authority to set interest rates, which varies from State to State.

Here is another myth: Third-party bank partnerships will use this rule to skirt State supervision and usury laws. Simply not true.

The truth is, banks primarily partner with third parties to reach additional markets, benefiting from a particular expertise or technology to improve their efficiency. Partnerships with third parties do not change the bank's authority or expose interest rate differentials.

And last, but not least, progressive activists cite the interest rate as a real problem with the true lender rule. They are pushing a 36 percent best rate cap. They have even pushed it at the national level. The math simply doesn't back up this falsehood.

The true lender rule was not some sinister plan by the previous administration to trick borrowers. It was not. It simply was not the case. This legal principle was established in 1864 with the National Bank Act. It is being undermined by an attempt at politics rather than sound policy, and what we should support is good, bipartisan policy that provides clarity to banks and fintechs so they can better serve our constituents and the consumers of America. That is it.

We have a well-regulated banking system. We do. It is not perfect. We have States that have various laws that are operable in their States, but we also have a national system here as well.

We have worked harmoniously, not perfectly, over the last 157 years since we established the national banking system. But why undermine a key principle of that national banking system by spurious arguments that actually don't have to do with the true lender rule? They don't. There are other elements that the left opposes that actually, on a bipartisan basis, we oppose, but the true lender rule is not it.

It is a question of whether or not the bank that is providing you the loan is, in fact, the true lender. That is it. It is not fancier than that, people. That is what it is. That is what we are arguing about today, and that is kind of the absurdity of this stuff that we are debating right now, because it is that simple.

So let's promote financial inclusion the way that the President outlined, which was promoting financial inclusion, making rates more competitive and the cost of credit cheaper for individuals. Let's do that. Let's oppose this resolution before us so we can have sound principles, so we can drive that inclusion that is necessary and very important.

Madam Speaker, I reserve the balance of my time.

Ms. WATERS. Madam Speaker, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), the Speaker of the House of Representatives.

Ms. PELOSI. Madam Speaker, I thank the gentlewoman for her leadership in bringing this important legislation, more than one piece of legislation, to the floor today.

As I rise to speak in support of reversing the anti-consumer fake lender rule pushed through in the final weeks of the previous administration, I just want to take a moment to put it in perspective.

Madam Speaker, in November, the people elected Democratic majorities in the Congress that would be for the people, fighting for the public interests, not the special interests.

To that end, they elected majorities that would reverse the damage inflicted on their health and financial security by the last administration.

That mission is why the House this week is passing legislation under the Congressional Review Act to reverse three of the past President's most egregious assaults on families' well-being.

The Congressional Review Act is one of Congress' most important tools to reassert the power of the people's House to deliver for the people and to reclaim our authority under the Constitution, upholding the balance of powers that is the foundation of our American democracy.

With the gentlewoman's permission, I wish to speak to the anti-consumer fake lender rule, but also speak to two other issues under the Congressional Review Act this afternoon.

On the floor today is legislation, again, to reverse the anti-consumer fake lender rule pushed through in the final weeks of the previous administration.

This fake lender rule greenlights rent-a-bank schemes in which predatory lenders evade bank interest rate limits to swindle vulnerable consumers. This is done by putting a bank name on loan paperwork and claiming that the bank, not the predatory lender, issued the loan.

To take one example, in California, where the interest rate on a 2-year $2,000 loan is capped at 25 percent, lenders can use rent-a-bank partnerships to make loans with rates up to 225 percent.

This bipartisan resolution to end the fake lender rule is supported by many: a bipartisan coalition of 25 State attorneys general; faith leaders, including the National Latino Evangelical Coalition, the National Association of Evangelicals, the National Baptist Convention USA, hundreds of banking law and consumer finance regulation scholars, and Americans across the country and across parties, urging us to support this Congressional Review Act reversal of the anti-consumer fake lender rule.

Also today, we are considering legislation to undo the antiworker, pro-discrimination rule forced through in the final week of the past administration.

The EEOC was established to protect working people from discrimination and ensure that discrimination charges are resolved fairly. But this rule would impose draconian new obligations that bias the conciliation process against employees, toward employers; escalate the potential for retaliation, because retaliation claims make up half of EEOC's charges filed at the EEOC last year; siphon off scarce EEOC resources and saddle the EEOC with wasteful collateral litigation, prolonging harm to workers through delays; and contravene both the Supreme Court precedent and Congressional intent.

This month, civil rights and workers' rights organizations wrote to Congress in support of S.J. Res. 13, writing: ''The EEOC must be able to conduct its work efficiently . . . to prevent and remedy workplace discrimination.

''This mission is even more critical in the middle of a global pandemic that continues to have severe economic repercussions for women, people of color, and other marginalized communities.

''The final rule will only deepen the barriers working people face coming forward to report discrimination and obtain justice.''

This Congressional Review Act legislation passed the Senate. Hopefully, it will pass the House today.

Finally, tomorrow we take up bipartisan legislation that paves the way to restore the Obama-era protections against harmful methane pollution, which the most recent past President rolled back.

Briefly, these safeguards are key protections for public health that will also make a serious difference in combating the climate crisis. Methane is responsible for at least one-quarter of the warming of the planet. And it is 25 times more potent than carbon dioxide in trapping heat in the atmosphere.

This resolution passed on a bipartisan basis in the Senate and in the Energy and Commerce Committee. It builds on the commitment of the President and the Democratic Congress to tackle the climate crisis.

As the administration has stated, addressing methane pollution is an urgent and essential step.

Madam Speaker, with that, as Speaker, I am proud to be able to use the Speaker's prerogative to speak beyond the item on the floor right now.

I am proud to support these important actions to reverse the Trump damage and to deliver results that make a difference in the lives of hardworking American families.

I thank all of our leaders for this legislation for the people: Chair BOBBY SCOTT and Representative SUZANNE BONAMICI on the EEOC resolution; Representative CHUY Garcia for his work on the true lender resolution; Representative DIANA DEGETTE and Chairman FRANK PALLONE, and many others, on the methane resolution from the Energy and Commerce Committee.

I urge strong votes for S.J. Res. 13, 14, and 15.

Coming back to the resolution on the floor right now, I thank the distinguished chair of the Financial Services Committee for her leadership in looking out always for the consumer, for competition, for fairness, for the people.

□ 1345

Mr. McHENRY. Madam Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. LUETKEMEYER), who is the ranking member on the Consumer Protection and Financial Institutions Subcommittee of the Financial Services Committee, and also the ranking member on the Small Business Committee.

Mr. LUETKEMEYER. Madam Speaker, I rise today to discuss S.J. Res. 15, House Democrats' attempt to limit the ability of our Nation's banks to serve consumers by overturning the true lender rule.

The true lender rule was finalized by the OCC in 2020, in an effort to clarify who was the true lender in national bank third-party relationships. By providing this clarity, these third-party entities were able to provide financial services in partnership with financial institutions with the protections of legal precedence.

Partnering with third parties like fintechs gives financial institutions the ability to increase access to credit, especially for low- and moderate-income consumers and small businesses.

Unfortunately, the bill before us is nothing more than a politically motivated attempt by Democrats to make it more expensive and difficult for banks to serve customers, and its passage will have long-term consequences.

According to the Congressional Review Act, if this legislation is passed, the OCC will not have the ability to issue a similar rule down the road. This will leave bank-fintech partnerships in limbo with a great deal of uncertainty regarding the loans they make and who is the true lender in the relationship.

Democrats are constantly putting their disdain for America's banks ahead of the needs of their constituents, and this bill is another prime example of this unfortunate practice.

I firmly oppose this bill and its prevention of widespread financial inclusion, especially for low- and moderate-income consumers.

Ms. WATERS. Madam Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. GARCÍA), who is also the sponsor of the House companion to this legislation.

Mr. GARCÍA of Illinois. Madam Speaker, I rise in strong support of S.J. Res. 15, a resolution to repeal the OCC's so-called true lender rule.

Earlier this year, my State, Illinois, passed a law that protects our consumers from predatory, high-interest loans. Eighteen other States have done the same.

I introduced the House version of this resolution because the true lender rule undermines laws like ours, laws that keep working-class people out of cycles of debt they can't pay back.

The rule is a rubber stamp for rent-a-bank schemes, where a lender can dodge State law by having a bank's name on the loan paperwork. That is all. No skin in the game, no investment in our communities; just a name on the paperwork.

This rule doesn't encourage innovation. It encourages playing games. This isn't a partisan issue. As a matter of fact, last year, 82 percent of Nebraska voters joined States like Arkansas and South Dakota to protect their communities from unpayable debt, and this rule from the OCC provides bad actors with a new tool to ignore them.

So a broad coalition of over 400 organizations—rural, urban, suburban—have come together in support of this measure, and they include consumer advocates, labor advocates, veterans, credit unions, and many other actors, including evangelical congregations.

Madam Speaker, I urge this body to pass this resolution and empower working-class communities like mine that are targeted by predatory lenders, and voters across the country who support consumer protections.

Mr. McHENRY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I would reference my colleagues the Federal Code, the Federal Register, that actually has the contents of this rule.

Madam Speaker, I include in the RECORD the actual rule that we are debating here, and I would highlight one piece in particular.

''The OCC agrees that rent-a-charter schemes have no place in the Federal financial system but disagrees that this rule facilitates such schemes. As noted above, instead, this proposal would help solve the problem by (1) providing a clear and simple test for determining when a bank makes a loan and (2) emphasizing the robust supervisory framework that applies to any loan made by a bank and to all third-party relationships to which banks are a party. As noted above, if a bank fails to satisfy its obligations under this supervisory framework, the OCC will use all the tools at its disposal, including its enforcement authority.''

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 7

[Docket ID OCC–2020–0026]

RIN 1557–AE97

National Banks and Federal Savings Associations as Lenders

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this final rule to determine when a national bank or Federal savings association (bank) makes a loan and is the ''true lender,'' including in the context of a partnership between a bank and a third party, such as a marketplace lender. Under this rule, a bank makes a loan if, as of the date of origination, it is named as the lender in the loan agreement or funds the loan.

DATES: The final rule is effective on December 29, 2020.

SUPPLEMENTARY INFORMATION:

I. Background

Lending partnerships between national banks or Federal savings associations (banks) and third parties play a critical role in our financial system. These partnerships expand access to credit and provide an avenue for banks to remain competitive as the financial sector evolves. Through these partnerships, banks often leverage technology developed by innovative third parties that helps to reach a wider array of customers. However, there is often uncertainty about how to determine which entity is making the loans and, therefore, the laws that apply to these loans. This uncertainty may discourage banks from entering into lending partnerships, which, in turn, may limit competition, restrict access to affordable credit, and chill the innovation that can result from these relationships. Through this rulemaking, the Office of the Comptroller of the Currency (OCC) is providing the legal certainty necessary for banks to partner confidently with other market participants and meet the credit needs of their customers.

However, the OCC understands that there is concern that its rulemaking facilitates inappropriate 'rent-a-charter' lending schemes—arrangements in which a bank receives a fee to 'rent' its charter and unique legal status to a third party. These schemes are designed to enable the third party to evade state and local laws, including some state consumer protection laws, and to allow the bank to disclaim any compliance responsibility for the loans. These arrangements have absolutely no place in the federal banking system and are addressed by this rulemaking, which holds banks accountable for all loans they make, including those made in the context of marketplace lending partnerships or other loan sale arrangements.

On July 22, 2020, the OCC published a notice of proposed rulemaking (proposal or NPR) to determine when a bank makes a loan. Under the proposal, a bank made a loan if, as of the date of origination, it (1) was named as the lender in the loan agreement or (2) funded the loan.

As the proposal explained, federal law authorizes banks to enter into contracts, to make loans, and to subsequently transfer these loans and assign the loan contracts. The statutory framework, however, does not specifically address which entity makes a loan when the loan is originated as part of a lending partnership involving a bank and a third party, nor has the OCC taken regulatory action to resolve this ambiguity. In the absence of regulatory action, a growing body of case law has introduced divergent standards for resolving this issue, as discussed below. As a result of this legal uncertainty, stakeholders cannot reliably determine the applicability of key laws, including the law governing the permissible interest that may be charged on the loan.

This final rule establishes a clear test for determining when a bank makes a loan, by interpreting the statutes that grant banks their authority to lend. Specifically, the final rule provides that a bank makes a loan when it, as of the date of origination, (1) is named as the lender in the loan agreement or (2) funds the loan.

II. Overview of Comments

The OCC received approximately 4,000 comments on the proposal, the vast majority of which were from individuals using a version of one of three short form letters to express opposition to the proposal. Other commenters included banks, nonbank lenders, industry trade associations, community groups, academics, state government representatives, and members of Congress.

Commenters supporting the proposal stated that the judicial true lender doctrine has led to divergent standards and uncertainty concerning the legitimacy of lending partnerships between banks and third parties. They also stated that, by removing the uncertainty, the OCC would help ensure that banks have the confidence to enter into these lending relationships, which provide affordable credit to consumers on more favorable terms than the alternatives, such as pawn shops or payday lenders, to which underserved communities often turn. Supporting commenters also observed that the proposal would enhance a bank's safety and soundness by facilitating its ability to sell loans. These commenters also noted that the proposal (1) makes clear that the OCC will hold banks accountable for products with unfair, deceptive, abusive, or misleading features that are offered as part of a relationship and (2) is consistent with the OCC's statutory mission to ensure that banks provide fair access to financial services.

Commenters opposing the proposal stated that it would facilitate so-called rent-a-charter schemes, which would result in increased predatory lending and disproportionately impact marginalized communities. Other opposing commenters stated that the proposal is an attempt by the OCC to improperly regulate nonbank lenders, a role they consider to be reserved exclusively to the states. Opposing commenters also asserted that the OCC did not have sufficient legal authority to issue the proposal and that the proposal violated the Administrative Procedure Act (APA) and 12 U.S.C. 25b.

Both supporting and opposing commenters recommended changes. These recommendations included (1) adopting a test that requires the true lender to have a predominant economic interest in the loan; (2) providing additional ''safe harbor'' requirements to enhance consumer protections (e.g., interest rate caps); (3) clarifying that certain traditional bank lending activities do not fall under the funding prong of the rule (e.g., indirect auto lending and mortgage warehouse lending); (4) providing additional details on how the OCC would supervise these relationships; and (5) stating that the rule will not displace certain federal consumer protection laws and regulations.

The comments are addressed in greater detail below.

III. Analysis

As noted in the prior section, commenters raised a variety of issues for the OCC's consideration. These are discussed below.

A. OCC's Authority To Issue the Rule

Some commenters argued the OCC lacks the legal authority to issue the rule because it would contravene the unambiguous meaning of 12 U.S.C. 85. These commenters believe that section 85 incorporates the common law of usury as of 1864, which they view as requiring courts to look to the substance rather than the form of a transaction. In a similar vein, commenters argued that section 85 incorporates all usury laws of a state, including its true lender jurisprudence. One commenter also argued that the proposal contradicts judicial and administrative precedent interpreting sections 85 and 86.

The OCC disagrees. The rule interprets statutes that authorize banks to lend—12 U.S.C. 24, 371, and 1464(c)—and clarifies how to determine when a bank exercises this lending authority. The OCC has clear authority to reasonably interpret these statutes, which do not specifically address when a bank makes a loan.

Banks do not obtain their lending authority from section 85 or 12 U.S.C. 1463(g). Nor are these statutes the authority the OCC is relying on to issue this rule. The proposal referenced sections 85 and 1463(g) in the regulatory text to ensure that interested parties understand the consequences of its interpretation of sections 24, 371, and 1464(c), including that this rulemaking operates together with the OCC's recently finalized 'Madden-fix' rulemaking. When a bank makes a loan pursuant to the test established in this regulation, the bank may subsequently sell, assign, or otherwise transfer the loan without affecting the permissible interest term, which is determined by reference to state law.

Other commenters questioned the OCC's authority on different grounds. Some asserted the OCC lacks authority to (1) exempt nonbanks from compliance with state law or (2) preempt state laws that determine whether a loan is made by a nonbank lender. One commenter also asserted that the proposal is an attempt by the OCC to interpret state law. A commenter further argued that the OCC's statutory interpretation is not reasonable, including because the proposal (1) would allow nonbanks to enjoy the benefits of federal preemption without submitting to any regulatory oversight and (2) violates the presumption against preemption, especially in an area of historical state police powers like consumer protection.

This rulemaking does not assert authority over nonbanks, preempt state laws applicable to nonbank lenders, or interpret state law. It interprets federal banking law and has no direct applicability to any nonbank entity or activity. Rather, in identifying the true lender, the rule pinpoints key elements of the statutory, regulatory, and supervisory framework applicable to the loan in question. As noted in the proposal, if a nonbank partner is the true lender, the relevant state (and not OCC) would regulate the lending activity, and the OCC would assess the bank's third-party risk management in connection with the relationship itself.

Furthermore, because commenters expressed concern that this rule would undermine state usury caps, it is also important to emphasize that sections 85 and 1463(g) provide a choice of law framework for determining which state's law applies to bank loans and, in this way, incorporate, rather than eliminate, state law. These statutes require that a bank refer to, and comply with, the usury cap established by the laws of the state where the bank is located. Thus, disparities between the usury caps applicable to particular bank loans result primarily from differences in the state laws that impose these caps, not from an interpretation that section 85 or 1463(g) preempt state law.

A commenter also asserted that the OCC's interpretation is not reasonable because it (1) does not solve the problem it claims to remedy, arguing that the proposal itself is unclear and requires banks to undertake a fact-specific analysis and (2) departs from federal cases holding that state true lender law applies to lending relationships between banks and nonbanks.

The OCC believes that this rule provides a simple, bright-line test to determine when a bank has made a loan and, therefore, is the true lender in a lending relationship. The only required factual analysis is whether the bank is named as the lender or funds the loan. The OCC has evaluated various standards established by courts and has determined that a clear, predictable, and easily administrable test is preferable. This test will provide legal certainty, and the OCC's robust supervisory framework effectively targets predatory lending, achieving the same goal as a more complex true lender test.

Several commenters also asserted that the proposal contravenes 12 U.S.C. 1, which charges the OCC with ensuring that banks treat customers fairly. One commenter also argued that the proposal is inconsistent with the Community Reinvestment Act (CRA) because it encourages predatory lending. As the OCC explained in the proposal, the rule's purpose is to provide legal certainty to expand access to credit, a goal that is entirely consistent with the agency's statutory charge to ensure fair treatment of customers and banks' statutory obligation to serve the convenience and needs of their communities.

B. 12 U.S.C. 25b

Several commenters asserted that the agency should have complied with 12 U.S.C. 25b, which applies when the OCC issues a regulation or order that preempts a state consumer financial law. Some of these commenters argued that the proposal fails to meet the preemption standard articulated in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al. (Barnett), as incorporated into section 25b. Commenters also argued that (1) section 25b(f) does not exempt the OCC's proposal from the requirements of section 25b because the rule is not limited to banks charging interest and (2) the proposal undermines or contravenes section 25b(h) because it extends preemptive treatment to subsidiaries, affiliates, and agents of banks.

The OCC disagrees: The requirements of section 25b are inapplicable to this rulemaking. Section 25b applies when the Comptroller determines, on a case-by-case basis, that a state consumer financial law is preempted pursuant to the standard for conflict preemption established by the Supreme Court in Barnett, i.e., when the Comptroller makes a preemption determination. This rulemaking does not preempt a state consumer financial law but rather interprets a bank's federal authority to lend. Furthermore, commenters arguing that section 25b(f) (which addresses section 85) does not exempt this rulemaking from the procedures in section 25b and that sections 25b(b)(2), (e), and (h)(2) (which address bank subsidiaries, affiliates, and agents) preclude the agency from issuing this rule are mistaken; this rulemaking is not an interpretation of section 85, nor does it address the applicability of state law to bank subsidiaries, affiliates, or agents.

C. Administrative Procedure Act

Several commenters asserted that, for various reasons, the proposal is arbitrary and capricious and, therefore, in violation of the APA. Some commenters argued that the proposal lacks an evidentiary basis, either entirely or with respect to certain assertions, such as the existence of legal uncertainty. The OCC disagrees. The APA's arbitrary and capricious standard requires an agency to make rational and informed decisions based on the information before it. Furthermore, the standard does not require the OCC to develop or cite empirical or other data to support its rule or wait for problems to materialize before acting. Instead, the OCC may rely on its expertise to address the problems that may arise.

The OCC has decided to issue this rule to resolve the effects of legal uncertainty on banks and their third-party relationships. In this case, the OCC's views are informed by courts' divergent true lender tests and the resulting lack of predictability faced by stakeholders. While the OCC understands its rule may not resolve all legal uncertainty for every loan, this is not a prerequisite for the agency to take this narrowly tailored action. Taking these considerations into account, the OCC has made a rational and informed decision to issue this rule.

Commenters also argued that the OCC's actions violate the APA because the agency has not given notice of its intention to reverse an existing policy or provided the factual, legal, and policy reasons for doing so. Specifically, these commenters referenced the OCC's longstanding policy prohibiting banks from entering into rent-a-charter schemes. This rulemaking does not reverse the OCC's position. The OCC's longstanding and unwavering opposition to predatory lending, including but not limited to predatory lending as part of a third-party relationship, remains intact and strong. In fact, this rulemaking would solve the rent-a-charter issues raised and ensure that banks do not participate in those arrangements. As noted in the proposal, the OCC's statutes and regulations, enforceable guidelines, guidance, and enforcement authority provide robust and effective safeguards against predatory lending when a bank exercises its lending authority. This rule does not alter this framework but rather reinforces its importance by clarifying that it applies to every loan a bank makes and by providing a simple test to identify precisely when a bank has made a loan. If a bank fails to satisfy its compliance obligations, the OCC will not hesitate to use its enforcement authority consistent with its longstanding policy and practice.

Furthermore, the final rule does not change the OCC's expectation that all banks establish and maintain prudent credit underwriting practices and comply with applicable law, even when they partner with third parties. These expectations were in place before the OCC issued its proposal and will remain in place after the final rule takes effect. For these reasons, the final rule does not represent a change in OCC policy.

D. Comments on the Proposed Regulatory Text

As noted previously, the OCC's proposed regulatory text set out a test for determining when a bank has made a loan for purposes of 12 U.S.C. 24, 85, 371, 1463(g), and 1464(c). Under this test, a bank made a loan if, as of the date of origination, it was named as the lender in the loan agreement or funded the loan.

Some commenters supported the rule without change, stating that the proposal provided the clarity needed to determine which entity is the true lender in a lending relationship. Other commenters supported the proposal as a general matter but suggested specific changes, including clarifying that the funding prong does not include certain lending or financing arrangements such as warehouse lending, indirect auto lending (through bank purchases of retail installment contracts (RICs)), loan syndication, and other structured finance.

These commenters are correct that the funding prong of the proposal generally does not include these types of arrangements: They do not involve a bank funding a loan at the time of origination. For example, when a bank purchases a RIC from an auto dealer, as is often the case with indirect auto lending, the bank does not ''fund'' the loan. When a bank provides a warehouse loan to a third party that subsequently draws on that warehouse loan to lend to other borrowers, the bank is not funding the loans to these other borrowers. In contrast, and as noted in the proposal, the bank is the true lender in a table funding arrangement when the bank funds the loan at origination.

Another commenter recommended that the OCC consider the ''safe harbor'' established in the recent settlement between the Colorado Attorney General and several financial institutions and fintech lenders. While we are aware of this settlement, the OCC believes that our approach achieves the goal of legal certainty while providing the necessary safeguards.

One commenter requested that the OCC expressly state in the final rule that the rulemaking is not intended to displace or alter other regulatory regimes, including those that address consumer protection. Another commenter requested that the OCC clarify how account information in true lender arrangements should be reported to consumer reporting agencies under the Fair Credit Reporting Act. As the preamble to the proposal noted, the OCC's rule does not affect the application of any federal consumer financial laws, including, but not limited to, the meaning of the terms (1) ''creditor'' in the Truth in Lending Act (15 U.S.C. 1601 et seq.) and Regulation Z (12 CFR part 1026) and (2) ''lender'' in Regulation X (12 CFR part 1024), which implements the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.). Similarly, the OCC's rule does not affect the applicability of the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.), the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.), the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), or their implementing regulations (Regulation C (12 CFR part 1003), Regulation B (12 CFR part 1002), and Regulation V (12 CFR part 1022)), respectively. The OCC recommends that commenters direct questions regarding these statutes and regulations to the Consumer Financial Protection Bureau.

Some commenters stated that the two prongs in the proposal's test would produce contradictory and absurd results. For example, several commenters noted that, under the proposal, two banks could be the true lender (e.g., at origination, one bank is named as the lender on the loan agreement and another bank funds the loan). In response to this comment, we have amended the regulatory text to provide that where one bank is named as the lender in the loan agreement and another bank funds the loan, the bank named as the lender in the loan agreement makes the loan. This approach will provide additional clarity and allow stakeholders, including borrowers, to easily identify the bank that makes the loan. Otherwise, the OCC adopts the regulatory text as proposed.

E. Rent-a-Charter Concerns; Supervisory Expectations

The OCC received multiple comments expressing concern that the proposal would facilitate rent-a-charter relationships and thereby enable nonbank lenders to engage in predatory or otherwise abusive lending practices. These commenters noted that nonbanks are generally not subject to the type of prudential supervision that applies to banks and that usury caps are the most effective method to curb predatory lending by nonbanks. They argued that the OCC's rule would effectively nullify these caps and facilitate the expansion of predatory lending.

As explained above, in a rent-a-charter arrangement, a lender receives a fee to rent out its charter and unique legal status to originate loans on behalf of a third party, enabling the third party to evade state and local laws, such as usury caps and other consumer protection laws. At the same time, the lender disclaims any responsibility for these loans. As a result of these arrangements, consumers can find themselves in debt to an unscrupulous nonbank lender that is subject to very little or no prudential supervision on a loan at an interest rate grossly in excess of the state usury cap.

The OCC agrees that rent-a-charter schemes have no place in the federal financial system but disagrees that this rule facilitates such schemes. As noted above, instead, this proposal would help solve the problem by (1) providing a clear and simple test for determining when a bank makes a loan and (2) emphasizing the robust supervisory framework that applies to any loan made by a bank and to all third-party relationships to which banks are a party. As noted above, if a bank fails to satisfy its obligations under this supervisory framework, the OCC will use all the tools at its disposal, including its enforcement authority.

Although the proposal discussed this supervisory framework in detail, it bears repeating because of its importance to this rulemaking. Every bank is responsible for establishing and maintaining prudent credit underwriting practices that: (1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made; (2) consider the nature of the markets in which the loans will be made; (3) provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed; (4) establish a system of independent, ongoing credit review and appropriate communication to management and to the board of directors; (5) take adequate account of concentration of credit risk; and (6) are appropriate to the size of the institution and the nature and scope of its activities. Moreover, every bank is expected to have loan documentation practices that: (1) Enable the institution to make an informed lending decision and assess risk, as necessary, on an ongoing basis; (2) identify the purpose of a loan and the source of repayment and assess the ability of the borrower to repay the indebtedness in a timely manner; (3) ensure that any claim against a borrower is legally enforceable; (4) demonstrate appropriate administration and monitoring of a loan; and (5) take account of the size and complexity of a loan. Every bank should also have appropriate internal controls and information systems to assess and manage the risks associated with its lending activities, including those that provide for monitoring adherence to established policies and compliance with applicable laws and regulations, as well as internal audit systems.

In addition, a bank's lending must comply with all applicable laws and regulations, including federal consumer protection laws. For example, section 5 of the Federal Trade Commission Act (FTC Act) provides that ''unfair or deceptive acts or practices in or affecting commerce'' are unlawful. The Dodd-Frank Wall Street Reform and Consumer Protection Act also prohibits unfair, deceptive, or ''abusive'' acts or practices. The OCC has taken a number of public enforcement actions against banks for violating section 5 of the FTC Act and will continue to exercise its enforcement authority to address unlawful actions.

Banks also are subject to federal fair lending laws and may not engage in unlawful discrimination, such as ''steering'' a borrower to a higher cost loan on the basis of the borrower's race, national origin, age, or gender. If a bank engages in any unlawful discriminatory practices, the OCC will take appropriate action under the federal fair lending laws. Further, under the CRA regulations, CRA-related lending practices that violate federal fair lending laws, the FTC Act, or Home Ownership and Equity Protection Act, or that evidence other discriminatory or illegal credit practices, can adversely affect a bank's CRA performance rating.

The OCC has also taken significant steps to eliminate predatory, unfair, or deceptive practices in the federal banking system, recognizing that ''[s]uch practices are inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable homeownership by the broadest spectrum of America.'' To address these concerns, the OCC requires banks engaged in lending to take into account the borrower's ability to repay the loan according to its terms. In the OCC's experience, ''a departure from fundamental principles of loan underwriting generally forms the basis of abusive lending: Lending without a determination that a borrower can reasonably be expected to repay the loan from resources other than the collateral securing the loan, and relying instead on the foreclosure value of the borrower's collateral to recover principal, interest, and fees.''

Additionally, the OCC has cautioned banks about lending activities that may be considered predatory, unfair, or deceptive, noting that many such lending practices are unlawful under existing federal laws and regulations or otherwise present significant safety, soundness, or other risks. These practices include those that target prospective borrowers who cannot afford credit on the terms being offered, provide inadequate disclosures of the true costs and risks of transactions, involve loans with high fees and frequent renewals, or constitute loan ''flipping'' (frequent re-financings that result in little or no economic benefit to the borrower that are undertaken with the primary or sole objective of generating additional fees). Policies and procedures should also be designed to ensure clear and transparent disclosure of the terms of the loan, including relative costs, risks, and benefits of the loan transaction, which helps to mitigate the risk that a transaction could be unfair or deceptive. The NPR also highlighted specific questions that the OCC evaluates as part of its robust supervision of banks' lending relationships.

In addition to this framework targeted at banks' lending activities, the OCC has issued comprehensive guidance on third-party risk management. These standards apply to any relationship between a bank and a third party, including lending relationships, regardless of which entity is the true lender. Pursuant to this guidance, the OCC expects banks to institute appropriate safeguards to manage the risks associated with their third-party relationships.

Under the final rule, this robust supervisory framework will continue to apply to banks that are the true lender in a lending relationship with a third party. Rather than allowing banks to enter into rent-a-charter schemes, the final rule will ensure that banks understand that the OCC will continue to hold banks accountable for their lending activities.

IV. Regulatory Analyses

Paperwork Reduction Act. In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC has reviewed the final rule and determined that it will not introduce any new or revise any existing collection of information pursuant to the PRA. Therefore, no submission will be made to OMB for review.

Regulatory Flexibility Act. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total assets of $41.5 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

The OCC currently supervises approximately 745 small entities. The OCC expects that all of these small entities would be impacted by the rule. While this final rule could affect how banks structure their current or future third-party relationships as well as the amount of loans originated by banks, the OCC believes the costs associated with any administrative changes in bank lending policies and procedures would be de minimis. Banks already have systems, policies, and procedures in place for issuing loans when third parties are involved. It takes significantly less time to amend existing policies than to create them, and the OCC does not expect any needed adjustments will involve an extraordinary demand on a bank's human resources. In addition, any costs would likely be absorbed as ongoing administrative expenses. Therefore, the OCC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Final Regulatory Flexibility Analysis is not required.

Unfunded Mandates Reform Act. Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1532, the OCC considers whether a final rule includes a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million adjusted for inflation (currently $157 million) in any one year. The final rule does not impose new mandates. Therefore, the OCC concludes that implementation of the final rule would not result in an expenditure of $157 million or more annually by state, local, and tribal governments, or by the private sector.

Riegle Community Development and Regulatory Improvement Act. Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA, 12 U.S.C. 4802(b), requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. This final rule imposes no additional reporting, disclosure, or other requirements on insured depository institutions, and therefore, section 302 is not applicable to this rule.

Congressional Review Act. For purposes of the Congressional Review Act (CRA), 5 U.S.C. 801 et seq., the Office of Information and Regulatory Affairs (OIRA) of the OMB determines whether a final rule is a ''major rule,'' as that term is defined at 5 U.S.C. 804(2). OIRA has determined that this final rule is not a major rule. As required by the CRA, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

Administrative Procedure Act. The APA, 5 U.S.C. 551 et seq., generally requires that a final rule be published in the Federal Register not less than 30 days before its effective date. This final rule will be effective 60 days after publication in the Federal Register, which meets the APA's effective date requirement.

List of Subjects in 12 CFR Part 7

Computer technology, Credit, Derivatives, Federal savings associations, Insurance, Investments, Metals, National banks, Reporting and recordkeeping requirements, Securities, Security bonds.

Office of the Comptroller of the Currency

For the reasons set out in the preamble, the OCC amends 12 CFR part 7 as follows.

PART 7—ACTIVITIES AND OPERATIONS

1. The authority citation for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 25b, 29, 71, 71a, 92, 92a, 93, 93a, 95(b)(1), 371, 371d, 481, 484, 1463, 1464, 1465, 1818, 1828(m) and 5412(b)(2)(B).

2. Add §7.1031 to read as follows:

§7.1031 National banks and Federal savings associations as lenders.

(a) For purposes of this section, bank means a national bank or a Federal savings association.

(b) For purposes of sections 5136 and 5197 of the Revised Statutes (12 U.S.C. 24 and 12 U.S.C. 85), section 24 of the Federal Reserve Act (12 U.S.C. 371), and sections 4(g) and 5(c) of the Home Owners' Loan Act (12 U.S.C. 1463(g) and 12 U.S.C. 1464(c)), a bank makes a loan when the bank, as of the date of origination:

(1) Is named as the lender in the loan agreement; or

(2) Funds the loan.

(c) If, as of the date of origination, one bank is named as the lender in the loan agreement for a loan and another bank funds that loan, the bank that is named as the lender in the loan agreement makes the loan.

Brian P. Brooks,
Acting Comptroller of the Currency.
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BILLING CODE 4810–33–P

Mr. MCHENRY. Madam Speaker, additionally, I would highlight for you that the outline here and the arguments by my colleagues on the other side of the aisle really strikes at the nature of national banking.

So just repeal the National Banking Act rather than trying to undermine it by taking away the legal principle by which a bank can make a loan. That is what this rule does, and that is the absurdity of this debate. That is why I oppose this attempt on the floor today.

Madam Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. LOUDERMILK), my colleague and friend.

Mr. LOUDERMILK. Madam Speaker, I thank my friend and colleague from North Carolina for managing the opposition to this.

Look, it is simple. The reason we are here today is to debate the Democrats' latest episode in their anti-financial technology agenda, but also their rush to undo any policy of the previous administration, whether it was good or bad.

Now, here are the facts: More than 30 percent of adults are unbanked or underbanked, 40 percent do not have enough savings to cover a $400 emergency expense, 42 percent have a subprime credit score and are rejected for bank loans at a rate four times higher than those with prime credit.

Now, fintech has been instrumental in expanding access to credit for consumers who have little or no credit history. Online lending has grown to $90 billion a year.

So what do consumers typically use these loans to pay for?

Funerals, weddings, car repairs, and home improvement.

Fintech is particularly important for minorities. In fact, fintechs were the top PPP lenders to Black-owned businesses and Hispanic-owned businesses during the pandemic.

But there is an issue that has caused difficulty when banks and fintech companies partner to make loans, and that is the question of which entity is considered the true lender. Until recently, this question was attempted to be settled in a series of confusing and conflicting lawsuits. The courts are divided on it. But, last year, the OCC finalized a rule to provide much-needed certainty. It is no surprise that the organizations calling for the rule to be overturned are the so-called consumer groups that, for the most part, are funded by trial lawyers.

The Democrats are attempting to overturn this rule because some imaginary lenders could rent a bank charter to engage in predatory lending, but as the ranking member has just stated, that is clearly prohibited in the existing rule. This resolution is devastating to minority consumers and businesses, those with subprime credit, and the unbanked.

Instead of giving those people options, this resolution would direct them to payday lenders, or in States like Georgia where payday lending is illegal, they will have no access to credit.

Madam Speaker, I urge opposition to this disastrous resolution.

Ms. WATERS. Madam Speaker, I yield 2 minutes to the distinguished gentlewoman from Michigan (Ms. TLAIB).

Ms. TLAIB. Madam Speaker, we know it is expensive to be poor in our country; that we live in a country with a system that continues to put profit before our people, and it must stop.

In my home State of Michigan, communities that are more than a quarter Black and Latino have 50 percent more payday lenders than anywhere else in the State. These lenders target our communities, the most financially vulnerable communities. Payday lenders in Michigan are 62 percent more common in low-income Census tracts compared to statewide average.

That is what folks mean when they say that we need to abolish structural racism in our country.

You cannot justify loans of 100 percent APR or higher as providing access to credit when they trap borrowers in destructive cycles of debt and ruin their credit. World Business Lenders offered loans of upwards of 268 percent of APR, despite the fact that its rent-a-bank partner was regulated by the OCC. They found a way around the rules, and that is unacceptable.

OCC's rules leave States like our State of Michigan no ability to enforce their own State rate caps, giving predatory lenders free rein to exploit our neighbors with outrageous APRs.

Repealing the true lender rule is the first step toward protecting borrowers from predatory lenders, and I am proud to support it.

Mr. MCHENRY. Madam Speaker, I yield 1½ minutes to the gentleman from Utah (Mr. MOORE), a great new Member of the Congress.

Mr. MOORE of Utah. Madam Speaker, I rise today to speak in opposition to the CRA before us.

Innovation in our financial industry lifts Americans across all levels of the socioeconomic spectrum. A great example of this has been the emergence of the fintech industry, which has helped more Americans access secure, affordable credit.

Unfortunately, government regulation has stymied innovation as regulatory uncertainties have imposed artificial barriers to our creativity. Recent court rulings have only exacerbated this uncertainty by creating confusion about who the true lender of a loan is when a bank works with a third party.

In 2020, the Office of the Comptroller sought to clarify this uncertainty by finalizing the true lender rule. This rule allowed our local community and regional banks to provide expanded access to banking services and lower the cost of banking to consumers across the Nation. It is that simple.

Commonsense reforms that help banks and the fintech industry do business, in turn, make life easier for families, individuals, and businesses. Unfortunately, my Democrat colleagues are seeking to roll this rule back.

Nullifying the rule will decrease credit accessibility for underserved communities, hurt community banks' ability to utilize new technologies, and dissuade innovation in the financial services sector.

Madam Speaker, I oppose S.J. Res. 15, and I encourage my colleagues to vote ''no.''

Ms. WATERS. Madam Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN), who is also the chair of the Subcommittee on Oversight and Investigations.

Mr. GREEN of Texas. And still I rise, Madam Speaker. Again, I thank the chairwoman for the time and the opportunity.

I would say to all, I recall the debate around the yield spread premium, wherein a loan originator could say to a person, ''Here is a loan, you are lucky to get it for 10 percent'' when the person qualified for a loan at 5 percent.

We eliminated the dastardly yield spread premium and the harm that it caused. We have a similar circumstance with the rent-a-bank scheme that steals the American Dream, such that people who qualify for better loans will likely get higher loans because they don't always understand the scheme.

So I rise today, and I thank Mr. GARCIA for what he has done to bring this bill to fruition. I thank the Chairwoman, and I absolutely support the legislation.

Mr. MCHENRY. Madam Speaker, I yield 3 minutes to the gentleman from Kentucky (Mr. BARR), who is the ranking member on the Subcommittee on National Security, International Development, and Monetary Policy of the Financial Services Committee. He is also a member of the Foreign Affairs Committee.

□ 1400

Mr. BARR. Madam Speaker, I rise today also in opposition to S.J. Resolution 15, the Congressional Review Act repeal of the Office of the Comptroller of the Currency's true lender rule.

The United States has the most vibrant and innovative financial system in the world. Recent advancements in technology have fostered products and partnerships that expand access to credit to large swaths of the population that previously couldn't access basic financial services.

Many of these innovations faced challenges from regulatory red tape or confusing and often conflicting rules. The OCC's true lender rule gave needed clarity to banks and their partners, fixing the disastrous Madden rule.

The OCC's true lender rule gave that clarity, but unfortunately, the effort in the House today threatens to undermine the progress that we have made and compromise underbanked individuals' and small businesses' access to financial services.

I spoke with a local Kentucky bank that partners with a nonbank fintech lender to provide credit to consumers, including many underbanked populations. They told me that absent the true lender rule, they will once again be buried in compliance costs to keep track of the patchwork of cases that dictate the rules of the road.

Rather than embrace innovation to deliver cost savings to their customers, many of whom have trouble accessing traditional financial services to begin with, the bank will need to retain thousand-dollar-an-hour New York lawyers just to keep everything straight. And guess what? Those costs get passed on to the consumer through higher prices or reduced product availability.

This is yet another example of the Democrats sacrificing good policy for the sake of political points, all under the guise of consumer protection.

Contrary to some of the rhetoric from my colleagues on the other side of the aisle, a vote for this CRA will actually harm the very people they purport to be helping.

Madam Speaker, one final point. I include in the RECORD an April 14, 2021, letter to the chair of the Financial Services Committee from the former OCC Acting Comptroller Blake Paulson.

OFFICE OF THE COMPTROLLER OF THE CURRENCY,
Washington, DC, April 14, 2021.

Hon. MAXINE WATERS,
Chairwoman, Committee on Financial Services, House of Representatives, Washington, DC.

Hon. PATRICK MCHENRY,
Ranking Member, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR CHAIRWOMAN WATERS AND RANKING MEMBER MCHENRY: On March 26, 2021, H.J. Res. 35 was introduced, providing for Congressional disapproval under the Congressional Review Act of the Office of the Comptroller of the Currency's (OCC) final rule, entitled ''National Banks and Federal Savings Associations as Lenders,'' commonly referred to as the ''True Lender'' rule. As you and other members consider the resolution, I want you to be aware of the rule's intended effect and the adverse impact of overturning the rule.

On October 27, 2020, the OCC issued its final true lender rule to provide legal and regulatory certainty to national banks' and federal savings associations' (banks) lending, including loans made in partnerships with third parties. The OCC's rule specifies that a bank makes a loan and is considered to be the true lender of the loan if, as of the date of origination, it (1) is named as the lender in the loan agreement or (2) funds the loan. The rule clarifies that as the true lender of a loan, the bank retains the compliance obligations associated with making the loan, even if the loan is later sold, thus negating concerns regarding harmful rent-a-charter arrangements. Our rulemaking prevents potential arrangements in which a bank receives a fee to ''rent'' its charter and unique legal status to a third party with the intent of evading state and local laws, while disclaiming any compliance responsibility for the loan. These schemes have absolutely no place in the federal banking system, and this rule helps address them.

The rule makes clear banks' responsibility and accountability for the loans they make and facilitates the OCC's supervision of this core banking activity. Disapproval of the rule would return bank lending relationships to the previous state of legal and regulatory uncertainty, which, as nearly 50 preeminent economic and finance scholars explained in January 2021, adversely affects the function of secondary markets and restricts the availability of credit.

Legal and regulatory certainty facilitates access to responsible credit and clarifies responsibility and accountability in lending involving third-party partnerships. Bank third-party partnerships help banks better serve their communities by expanding access to affordable credit products from mainstream financial service providers. Such access is particularly important as individuals and small businesses across the country work to recover from effects of the COVID–19 pandemic. Banks seek partnerships with third parties for a variety of legitimate reasons, including reaching additional markets, benefiting from specific expertise or technology, and improving the efficiency and cost of their own operations. The OCC's third-party risk management guidance and supplemental exam procedures make clear to banks that they retain the risks for activities conducted through relationships with third parties.

With the legal and regulatory certainty provided by the rule, lending by banks made in partnership with third parties can be assessed as part of the ongoing supervision of these banks, including as part of the OCC's examinations to evaluate bank compliance with applicable laws and regulations that ensure consumer protection, Bank Secrecy Act and anti-money laundering compliance, required disclosures, and other obligations associated with making loans. The OCC clarified examiner responsibilities in assessing true lender activities in third-party relationships in 2021. This clarification addressed considerations related to assessing banks' due diligence on the lending product or activity (e.g., terms and scope) and the third party; credit risk management, including underwriting practices; model risk management; compliance management systems; and ongoing monitoring of the lending activity and the third party's performance.

If a bank fails to satisfy any of its compliance obligations, the OCC will not hesitate to use its supervisory and enforcement authorities to correct the deficiencies, protect consumers, and ensure the federal banking system operates in a safe, sound, and fair manner.

As you consider the Congressional Review Act resolution, you should be confident that the OCC issued this rule with the intent to enhance its ability to supervise bank lending. The rulemaking conformed to the Administrative Procedure Act, and the agency considered all stakeholder comments provided during the rulemaking process. The resulting rule is consistent with the authority granted to the agency by Congress.

It is also important to dispel misperceptions of the rule, many of which are repeated by opponents of the rule. To be clear, the rule does not change banks' authority to export interest rates. That authority is granted by federal statute. Nor does the rule permit national banks to charge whatever rate they like; national banks and federal savings associations have the same authority as state banks regarding the exportation of interest rates. Both federal and state-chartered banks must conform to applicable interest rate limits. Disparities of interest rates from state to state result from differences in the state laws that impose these caps, not OCC rules or actions. States retain the authority to set interest rates, and rates vary from state-to-state.

The rule does not limit states' ability to regulate the conduct of state-licensed and regulated nonbank lenders, which engage in the vast majority of predatory lending. States are the primary regulators of nonbank lenders, including payday lenders. Nonbank lenders are generally also subject to the rules and enforcement actions of the Consumer Financial Protection Bureau (CFPB).

It is also important to understand why demand exists for short-term, small-dollar credit products and why many consumers rely on nonbank sources of such credit, including payday lenders. Unfortunately, mainstream service providers, including commercial banks, largely abandoned short-term small-doljar lending over the past two decades. The resulting lack of choice and fewer options pushed up the cost of these products and forced consumers to seek services on less favorable terms. Because millions of U.S. consumers do not have sufficient savings or access to traditional credit, they borrow nearly $90 billion each year in short-term small-dollar loans typically ranging from $300 to $5,000 to make ends meet and to address things like emergency car repairs and other unexpected expenses. That is why the OCC has remained vocal about encouraging banks to provide consumers with more safe and affordable options to meet these small-dollar needs. In providing these products, banks should consider the ''Interagency Lending Principles for Offering Responsible Small-Dollar Loans,'' published in May 2020. Banks should also consider the full and actual cost of a credit product and its affordability. Fees associated with short-term loans may range from $10 to $30 per $100 borrowed, and the imputed annual percentage rate (APR) of those loans can appear to exceed 100 percent or more. But often, the fees and total cost of these loans to the consumer can be less than that of loans made with a 36 percent APR, when such loans are available at all.

As you consider the Congressional Review Act resolution, please keep in mind what may be an unintended consequence of a Congressional Review Act disapproval. Disapproving the OCC's true lender rule will constrain future Comptroller ability to address the true lender issue and may limit the OCC's ability to take supervisory or enforcement actions against banks that would have been deemed to have ''made'' the loan under the true lender rule. Rather than vacate the rule, limit future Comptrollers from taking up similar rules or possibly hamstring the OCC's enforcement authority, changes to the rule, if any, should be made through the agency's rulemaking process and in accordance with the Administrative Procedures Act.

Enclosed is a fact sheet that provides additional information for your awareness. If you have any questions or need additional information, please do not hesitate to contact me or Carrie Moore, Director, Congressional Relations.

Sincerely,

BLAKE J. PAULSON,
Acting Comptroller of the Currency.

Mr. BARR. The point I want to highlight is that the former Acting Comptroller was making the point that disapproving the OCC's true lender rule will constrain a future Comptroller's ability to address the true lender issue and limit the OCC's ability to take supervisory or enforcement actions against banks that would have been deemed to have made the loan under the true lender rule; meaning that the way the CRA law operates, if the House passes this resolution, we will have a permanent problem in the credit markets that will deprive low- and moderate-income Americans of the financial products that they desperately need.

That is why I urge all my colleagues to reject this misguided proposal.

Ms. WATERS. Madam Speaker, I yield 1 minute to the gentlewoman from California (Ms. PORTER).

Ms. PORTER. Madam Speaker, I express my gratitude to Chairwoman WATERS for allowing me to speak in support of invalidating the predatory true lender rule.

In our home State, the legislature passed an interest rate cap of 36 percent on loans of up to $10,000 about 2 years ago.

Before California Governor Newsom had even signed this bill into law, predatory online lenders began plotting during their shareholder earnings calls to evade the new law through rent-a-bank arrangements. Companies like Speedy Cash and CashNetUSA went so far as to gloat about the California law creating a huge opportunity for them by driving out their competition, subprime title lenders based in California.

Since the founding of the United States, States have chosen to impose their own limits on interest rates that lenders may charge consumers. The Trump administration's true lender rule greenlit these rent-a-bank schemes and, in doing so, undermined the will of Californians who, through the democratic process, chose to prohibit abusive interest rates.

The true lender rule violates our federalist democracy, and it must be invalidated.

Mr. MCHENRY. Madam Speaker, I yield 2 minutes to the gentleman from Florida (Mr. DONALDS), who has been a great new Member of Congress.

Mr. DONALDS. Madam Speaker, I thank the gentleman for yielding to allow me to speak on this matter.

It is important to understand, Madam Speaker, that having access to financial products is critical for not only the innovation of our markets but for the future expansion of our markets. It is time to take the pettiness out of politics and actually prioritize policy that puts Americans first and puts America first.

True lender is not being discussed in a way that considers people. If that were the case, we would be recognizing the incredible ways it has spurred innovation in our markets and has provided more access to credit and other financial products for Americans.

Instead of Congress working together to create financial equity in a sustainable way or ensuring that the United States remains a global leader, Democrats are working to undo anything accomplished under the Trump administration, even if it means sacrificing the good of the people.

I support assessing harmful financial policies of the past and working to undo some of the mistakes that have been made. In fact, we could benefit from assessing legislation like Dodd-Frank, which has put tremendous downward pressure on community banks being formed in the United States. But that is not what is being done here.

We are not having honest conversations. My peers across the aisle are undoing good policy without an objective view to determine how it helps or hurts Americans.

Fintech has played a significant role in transforming our markets, helping smaller banks become more competitive, and creating more products and access for Americans. The true lender rule has supported that because it clarifies the legal framework that allows these bank and nonbank partnerships to be successful for consumers.

We should be prioritizing fair access to financial services for Americans and work to protect and promote innovation in our markets so that consumers have as many pathways as possible to prosperity and achieving the American Dream.

If we scrap the true lender rule, we will disrupt our market, stifle innovation, and hinder access to accountable and affordable credit for consumers and small businesses. This is not the precedent we should set in this body. It is a gross abuse of power and a knife in the back of consumers.

Ms. WATERS. Madam Speaker, I reserve the balance of my time.

Mr. MCHENRY. Madam Speaker, I yield myself the balance of my time.

The true lender rule specifies that when a bank makes a loan, the bank is the true lender. The rule clarifies what was uncertain and, therefore, made those loans more expensive.

This gives certainty to the marketplace. It is a good thing. The true lender rule is a good thing.

Under the true lender rule, we have fintechs that have been enabled to make loans in coordination with banks and regulated like the people that they work with, like the banks that they work with, which means the loans fall under Federal consumer protection laws, under Federal usury laws, under Federal laws.

One case in point, what the true lender rule enabled was one out of four African American-owned businesses accessing credit through fintechs.

I would ask Members to review a few pieces of evidence that I have here.

Madam Speaker, I would refer the Members to a study conducted by NYU highlighting the important role that fintechs play in supporting African American-owned small businesses.

I would also refer the Members to letters in opposition to S.J. Res. 15: a June 8 letter from the American Bankers Association, Consumer Bankers Association, Electronic Transactions Association, Independent Bankers of America, Midsize Bank Coalition of America, and National Bankers Association; an April 2, 2021, letter from FreedomWorks, Americans for Tax Reform, National Taxpayers Union, Center for a Free Economy, American Commitment, and Citizens Against Government Waste; a letter from the Structured Finance Association; a letter from the Independent Community Bankers of America; a May 11, 2021, letter from the American Bankers Association; a May 7, 2021, letter from the

Americans for Prosperity; and a June 22, 2021, letter from the Competitive Enterprise Institute, which consists of a number of additional signatories.

None of those people are payday lenders, by the way, which is the most spurious argument about the true lender rule. If you want to get at payday lending, go talk about valid when made. That would be the sound argument from there. At least it has some relationship tangentially to payday lending. True lender does not. These are different loans that are being described by my colleagues across the aisle.

Let's be clear. The National Banking Act enacted in 1864 established the principle by which and explicitly granted national banks the ability to transfer loans State-by-State. If you don't like that model, then repeal the 1864 National Banking Act instead of making these false arguments about the true lender rule, which simply provides clarity about the National Banking Act.

My colleagues across the aisle would have you believe that this is a complex scheme cooked up by the previous administration to get around consumer protection laws. That is not true. We are talking about 157 years of banking law here in the United States, and my colleagues across the aisle are arguing about that.

My Democratic colleagues also ignored this basic fact: They have made misleading statements about national banks versus State banks. They have implied falsehoods on State interest rates. They have cited protecting consumers when now they are just leaving them out to dry. That is not consumer protection.

I get it, Democrats are now so politically motived that the facts and longstanding precedent no longer matter. I think facts matter. In fact, Democrats are so blinded by partisanship, some can't even seem to differentiate between that doctrine of valid when made versus what we are discussing today, which is true lender. I think we should be rooted in fact, and our policy debates should be rooted in fact.

Make no mistake, the true lender rule provides necessary consumer protections and supports affordable credit to more communities. The rule does nothing to change interest rates, plain and simple. States retain that authority.

The actions in 2020 to clarify true lender are very different than codifying and clarifying valid when made. Both were important clarifications, though.

The argument today is about true lender, not some massive shift away from congressional intent, not something new, something longstanding.

Regardless, the Democrats will push through whatever they can in the House today. But as former Acting Comptroller Brooks recently stated, nullifying the true lender rule does nothing to undo payday lending—nothing. And it seems to be what my colleagues across the aisle have a real problem with.

Deal with that. Don't create needless pain for consumers. Don't drive up the cost of credit and make it less available by repealing this true lender rule.

This is another moment where my colleagues are working against the national banks for politics rather than protecting consumers and creating a more vibrant, competitive, and innovative marketplace.

We should do what is good for consumers in the financial system. Technology and innovation facilitate financial inclusion, which should be our goal.

Let's not waste further time here. Let's vote this idea down that we are debating right now. Let's get back to actually driving a more competitive marketplace and doing what is right for our constituents, what is right for consumers, and what is right for families.

Madam Speaker, I urge a ''no'' vote on this resolution, and I yield back the balance of my time.

Ms. WATERS. Madam Speaker, may I inquire how much time I have remaining.

The SPEAKER pro tempore (Ms. MCCOLLUM). The gentlewoman has 18 minutes remaining.

□ 1415

Ms. WATERS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this resolution would take the necessary action to reverse the harmful Trump-era true lender rule that preys on small business owners and individuals when they need assistance the most. This rule is a back door for nonbanks to charge triple digit interest rates that trap consumers.

Last month, the Senate passed this resolution on a bipartisan vote with all Democrats voting in support. They were joined by Republican Senators LUMMIS, RUBIO, and COLLINS. This resolution is also supported by more than 400 consumer, civil rights, veterans, small businesses, and other organizations, including the American Civil Liberties Union, Americans for Financial Reform, the Center for Responsible Lending, Faith for Just Lending, the NAACP, National Association of Federally-Insured Credit Unions, the National Consumer Law Center, Conference of State Bank Supervisors, and 25 State attorneys general from both red and blue States, among many others.

Madam Speaker, and Members, small businesses and underbanked consumers do not benefit from the rule. Instead, the rule allows nonbank lenders to launder loans through banks in order to charge those with limited access to credit triple digit interest rates and trap these consumers in devastating cycles of debt. These predatory rent-a-bank schemes disproportionately prey on communities of color, draining wealth from these communities and, in turn, perpetuating the racial wealth gap.

A disproportionate share of payday borrowers come from communities of color even after controlling for income. Communities of color have historically been left out of the banking system. Black and Latinx consumers are much less likely to have a checking account than White consumers, which is typically a requirement for a payday loan. About 17 percent of Black and 14 percent of Latinx households are unbanked compared to 3 percent of White households.

Payday lenders target communities of color. The communities most affected by redlining are the same who are saturated by payday lenders today, which are more likely to locate in more affluent communities of color than in less affluent White communities.

One borrower, a single mother living below the poverty line from California, submitted a complaint to the CFPB about Elevate's RISE.

''I was misled by RISE Credit to believe that they were unlike other predatory loan companies. By the time,'' she says, ''I understood what I had signed, I had paid them thousands of dollars in interest.

''I have recently become temporarily unemployed and called them to ask for help during my time of financial hardship. They refused any solution and my account is headed to collections now.

''The total paid is far over the amount initially borrowed from RISE. This is robbery, and all of the necessities I have for myself and my children are suffering because of it.

''How is it that they can do this? I am asking for help for not only my family, but for all of the families targeted by these predatory loans meant to target those living in poverty and struggling to live paycheck to paycheck.''

The fake lender rule protects lenders that not only destroy small businesses but also threaten to take business owners' homes.

In New York, Jacob Adoni, a realtor, has been facing foreclosure threats on a $90,000 loan with an interest rate of 138 percent APR.

In a court case—that is Adoni et al. v. World Business Lenders, LLC, Axos Bank and Circadian Funding filed in New York in October 2019—Adoni said he received threats that the lender would foreclose on his home after receiving a $90,000 loan at 138 percent APR, secured by his personal residence.

''Adoni was contacted by Circadian Funding with an offer of a personal loan that would be funded by WLB and Axos Bank. He was told that the loan documents would be provided to him at 12 p.m. and he must execute them by 6 p.m. or the offer would no longer be valid.

''Adoni was told by Circadian that the loan was meant to be a personal loan to him, but it was necessary for the loan documents to make reference to his business.''

He has received multiple threats to foreclose on his home and the mortgage.

Madam Speaker, let me just respond to some of what I have heard from the opposite side of the aisle. I am absolutely overcome by the great interest that my Republican colleagues have in helping minorities. I am so moved about the fact that all this is about helping minorities who have been put into trouble because they are subprime lenders. Now if they are, it is because they were the victim of predatory lenders who put them in a subprime position.

But I hardly think that this is all about taking care of minorities and these small businesses. This is about protecting the big banks. This is about protecting the national banks. You heard what the ranking member said. The big national banks have been in business for years, and we ought to let them operate the way that they have historically operated and not interfere with them.

I don't know where they get away with protecting these big national banks. And the constituents in their own district who are being misused because they happen to get money, money that was lent to them by a nonbank, and that nonbank partnered with a national bank, they are now having to pay the interest rates of another State, perhaps—like it was explained in California, why we have usury laws and there is a cap on those interest rates.

When they do this kind of partnering, it is all about getting to a State where they are made to pay whatever that big bank is allowed to collect from them.

Madam Speaker, this is a rip-off. This is about hurting the people who most need our help. This is about allowing this partnering to go on. And many of those people who are borrowing from these payday lenders and other nonbanks don't even know that they are going to be the victims of the big banks and the interest rates that they charge. This is absolutely ridiculous, and there is not a credible argument from the other side of the aisle about why they should disadvantage these minorities and small businesses that they claim that they are protecting. This is outrageous.

Madam Speaker, I am so pleased that the Senate passed this bill. And I am so pleased that the Republicans on the other side of the aisle—not on the other side of the aisle, on the other side of Congress—decided to join with the Democrats in order to do the right thing on behalf of our constituents.

Madam Speaker, when they talk about, Oh, this is just because they didn't like Trump and they want to undo whatever he has done, that is their talking point for the day. This is not about that.

This committee, the Committee on Financial Services, is a new and different kind of committee. We are not owned by the banks. We are not here to protect the big banks and the national banks. We are here because we are here to take care of what is right and what is fair. And this committee is not going to be about the business of ripping off the least of these.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to the rule, the previous question is ordered on the joint resolution.

The question is on the third reading of the joint resolution.

The joint resolution was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on passage of the joint resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCHENRY. Madam Speaker, on that I demand the yeas and nays.

The SPEAKER pro tempore. Pursuant to section 3(s) of House Resolution 8, the yeas and nays are ordered.

Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

PROVIDING FOR CONGRESSIONAL DISAPPROVAL OF THE RULE SUBMITTED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION RELATING TO ''UPDATE OF COMMISSION'S CONCILIATION PROCEDURES''

Mr. SCOTT of Virginia. Madam Speaker, pursuant to section 7 of House Resolution 486, I call up the joint resolution (S.J. Res. 13) providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Equal Employment Opportunity Commission relating to ''Update of Commission's Conciliation Procedures'', and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Pursuant to House Resolution 486, the joint resolution is considered read.

The text of the joint resolution is as follows:

S.J. RES. 13

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress disapproves the rule submitted by the Equal Employment Opportunity Commission relating to ''Update of Commission's Conciliation Procedures'' (86 Fed. Reg. 2974; published January 14, 2021), and such rule shall have no force or effect.

The SPEAKER pro tempore. The joint resolution shall be debatable for 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor or their respective designees.

The gentleman from Virginia (Mr. SCOTT) and the gentlewoman from North Carolina (Ms. FOXX) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. SCOTT of Virginia. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and insert extraneous materials on S.J. Res. 13.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. SCOTT of Virginia. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise today in support of S.J. Res. 13, a Congressional Review Act resolution disapproving the Equal Employment Opportunity Commission, or EEOC, Conciliation Rule.

This resolution will help ensure fairness for those who bring forth charges of unlawful workplace discrimination.

When the EEOC has found that an employer likely violated the law, it is required under title VII of the Civil Rights Act of 1984 to engage in conciliation before filing a lawsuit. This conciliation process is meant to be an informal and confidential opportunity for parties to settle a charge of discrimination in lieu of going to court.

Unfortunately, in the final weeks of the Trump administration, the EEOC issued a final rule that imposed onerous new requirements on the conciliation process.

Under the new rule, the EEOC must provide an employer with a written summary of the facts and the nonprivileged information the EEOC relied on to determine that the employer violated the law. Notably, the rule requires the EEOC to expose the identities of workers or groups of workers for whom relief is being sought unless they proactively request anonymity, and their witnesses.

This new rule will put a thumb on the scale in favor of employers in cases where the EEOC found that they likely violated workers' civil rights. Specifically, the rule incentivizes employers to focus litigation on whether the EEOC failed to satisfy the rule's new requirements instead of whether the employer engaged in unlawful discrimination.

In fact, on settlement—settlements had been more likely since the Supreme Court ruled that this conciliation process should be informal, unlike the rule that was promulgated late in the Trump administration. This will allow unscrupulous employers to drag out the conciliation process, possibly for years—and even avoid accountability altogether—by just litigating over whether the EEOC complied with the conciliation rule rather than correcting the discriminatory process.

□ 1430

The EEOC rule conflicts with the Supreme Court's 2015 decision in Mach Mining v. EEOC. It was a unanimous decision. It held that the EEOC must